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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Staff retention and legacy issues

Report of the Secretary-General

Summary

In its resolutions 59/273 and 59/274 of 23 December 2004, the General Assembly requested the Secretary-General, in consultation with the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, to submit proposals on ways to ameliorate the staffing situation at the Tribunals in the context of the proposed budget for the biennium 2006-2007. The Assembly also requested the Secretary-General to make every effort to reduce the vacancy rate and improve staff retention at the Tribunals, including by extending contracts of staff performing functions that are central to the implementation of the completion strategy beyond the period of the current budget.

The first part of the report is presented in response to that request. It is proposed that the General Assembly endorse the introduction of a retention bonus to staff members whose functions would be required to fulfil the completion strategy.

The second part of the report deals with the legacy issues that will be faced by the Tribunals upon completion of their respective mandates. These issues have been highlighted in the present report to bring them to the attention of the General Assembly, as they will have financial implications after the closure of the Tribunals.

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The Tribunals are currently discussing the issues with the relevant authorities at Headquarters, and concrete proposals and recommendations, will be submitted in the context of the programme budget for the biennium 2008-2009. Therefore, the Assembly is requested to take note of the issues.

I. Staff retention at the Tribunals

Introduction

1. In its resolutions 59/273 and 59/274 of 23 December 2004, the General Assembly requested the Secretary-General, in consultation with the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, to submit proposals on ways to ameliorate the staffing situation at the Tribunals in the context of the proposed budget for the biennium 2006-2007. In addition, the Assembly requested the Secretary-General to make every effort to reduce the vacancy rate and improve staff retention at the Tribunals, including by extending contracts of staff performing functions that are central to the implementation of the completion strategy beyond the period of the current budget.

2. Pursuant to that request, the Tribunals are proposing certain incentives for staff members that could be put in place in to ensure the timely completion of the mandates of the Tribunals by curtailing the flow of departures of experienced Tribunal staff that has been evidenced during the current biennium. Currently, the prospect of more attractive benefits and/or longer-term appointments than those offered by the Tribunals have encouraged staff to apply for posts in other United Nations and common system organizations, peacekeeping missions and the International Criminal Court, well in advance of the completion of their appointments. With the recent endorsement of the completion strategy by the Security Council, such attrition may become even more critical as the Tribunals approach the 2007/2008 time frame for the completion of their work. Having to replace key personnel in many areas of the Tribunals, i.e. investigations, appeals, prosecution and chambers, will impact negatively on the trials, which in turn will adversely affect the completion strategy. Although no one single measure will be sufficient to ensure that all staff remain with the Tribunals until completion of the mandate, it is apparent that certain incentives, if offered, could have a positive impact on retaining staff for a longer period of time.

3. However, as the Tribunals are moving closer to their completion dates, it is expected that the number of departures will increase further. That will slow down the speed with which trials are completed, and the financial costs associated with recruitment and training of new staff could be considerable. This could leave the organizations in a vulnerable position and affect their ability to meet the time and quality demands of the completion of their mandate.

The importance of retaining staff

4. The Tribunals are required to function at maximum speed and efficiency in order to meet their targets of finalizing trials by the end of 2008 and completing appeals by 2010. A critical aspect of reaching these targets is maintaining the highly skilled and specialized staff, even in the face of the need for an orderly downsizing

of that staff. The loss of institutional knowledge sometimes has serious consequences that may result in the slowing of the progress of trials. The Tribunals run massive multi-accused trials that generate thousands of pages of documentation. Some of the investigators attached to those trials have acquired knowledge of the trials over a period of 8 to 10 years. That knowledge cannot be replaced within a year or two, and, when lost, the trial team is placed at a huge disadvantage, unable to run the trial at a pace and with the ability conducive to completion.

5. In all categories and occupational groups, staff members at the Tribunals possess skills and institutional knowledge that make them essential to the daily functioning of the mission. The specialized experience and knowledge relative to the events that took place in the Balkans and Rwanda will be difficult to replace should key legal and investigative staff continue to leave in the numbers now being experienced. The specialized knowledge of the regions and the respective conflicts, the knowledge of international law (much of which has been developed within the Tribunals) and the operation of an international criminal tribunal are all unique to the Tribunals and to the staff currently on board. With each departure of staff, institutional knowledge and specific expertise is lost, and must be learned by a new recruit, at all levels and in all functions. The time needed to bring new staff up to speed has an immediate impact on the effectiveness and timeliness of court activity and related actions (i.e., inter alia, appeals and judgements).

6. Whether it is in terms of legal, administrative or language staff, the departure of key staff has immediate repercussions for the courts. For example, a senior trial attorney must have the highest credentials and experience from the home jurisdiction before becoming eligible for recruitment. Upon arrival, that same attorney must spend months developing a sufficient knowledge of the unique legal system of the Tribunal and the detailed facts of a case (which can involve the review of thousands of documents). Finally, although the official languages used in both Tribunals are English and French, the use of local languages is necessary for trials to proceed. This involves the translation of millions of pages of documents and the interpretation during the court proceedings from and into French and English and from Bosnian/Serbian/Croatian and Kinyarwanda into French and English. It is therefore critical that skilled language staff are retained to complete the work directly relating to the trials in both the Tribunals.

7. It is apparent therefore that the work of the Tribunals, at a pace that is commensurate with meeting the completion targets, requires retention and continuity of the specialized staff that allows the Tribunals to function.

Initial measures implemented by the Tribunals

8. In the period immediately following the announcement in 2002 of the completion strategy, both staff and management decided that any reduction of posts and staff should be undertaken in the first instance through attrition.

9. A staff survey conducted by the International Tribunal for the Former Yugoslavia Staff Union identified two major issues of concern: (a) the status of staff of the Tribunals vis-à-vis the Secretariat; and (b) the lack of job security. The results of the survey also highlighted the need for enhanced training and for staff and personal development and to address life-work issues.

10. Staff members of the Tribunals are not considered internal candidates when applying for positions elsewhere in the Secretariat. However, it was agreed with the Secretariat that arrangements could be made to allow Tribunal staff whose posts would be abolished to be considered at the 30-day mark for a period of six months prior to their separation date and to be able to retain that eligibility for a further six months after the post is abolished if they have not been successful in finding alternative employment with the United Nations prior to separation.

11. In order to provide a stronger sense of career security and to improve staff morale, it was decided to extend the length of employment contracts to a period of two years for all Tribunal staff. Through the introduction of flexible work arrangements, the establishment of an internal G to P examination at the Tribunals (after the Office of Human Resources Management had determined that Tribunal staff were not eligible to take part in the Secretariat competitive examination) and related activities, the Tribunals have strived to overcome staff anxieties and concerns.

12. Owing to cash flow constraints faced by the Tribunals, a recruitment freeze came into effect from 1 May through the end of December 2004. As a result, the Tribunals started to experience a sizeable number of departures by both Professional and General Service staff, a trend that continues to date. In order to promote a greater interest in remaining with the Tribunals, a number of special measures to counteract the attrition have been proposed jointly by the Tribunals which were endorsed by the Office of Human Resources Management and which include the reduction of the required post incumbency from two years to one year before staff can apply for posts at a higher level in the Tribunals. This has increased the possibility for the promotion of staff who otherwise meet the high qualification standards. The Tribunals have also placed greater emphasis on training, lateral reassignments and the recruitment of spouses, and a number of additional administrative measures that allow greater flexibility for both the staff and organization.

13. Training activities within both Tribunals have increased. Further expansion will address technical training and will also focus on courses and activities related to personal and professional development. Both Tribunals have developed internal measures to further career planning activities, such as the provision of special leave arrangements for training purposes and the establishment of a career transition centre to assist staff in pursuing career changes.

14. The Tribunals are currently considering additional measures to maintain the required staffing level and quality until completion of its mandate, should this be required. This includes the possibility of approaching national Governments for reimbursable short-term loans of highly qualified staff. Other options are to encourage organizations of the United Nations system to facilitate the secondment or temporary assignment of staff, bring staff on board under the United Nations-managed voluntary lateral reassignment programme during the final stages of the Tribunals or retain the services of staff beyond the retirement age. It is recognized, however, that it would be in the interest of all parties if such instances would be reduced to a minimum and if the cases could be completed with existing, experienced staff.

Proposal for a retention bonus

15. Although the above-mentioned measures have had a positive impact on staff morale, they are not sufficient to motivate staff to remain with the organization until notification that their posts are being abolished or until the completion of the mandate. The Tribunals therefore propose the introduction of a retention bonus. In the International Tribunal for the Former Yugoslavia staff survey mentioned in paragraph 9 above, over 80 per cent of staff indicated that they would consider remaining until the organization would no longer require their services if a retention bonus were to be offered. The methodology suggested for establishing such a bonus is along the lines of the current termination indemnity applicable to Secretariat staff, as provided for in annex III of the Staff Regulations. The termination indemnity is not an entitlement for staff at the Tribunals. The proposed bonus would only apply to the Tribunals, whose unique status is anchored in the fact that they are temporary in nature, have limited mandates and will both close down in accordance with the completion strategy.

Applicability

16. It is proposed that the retention bonus would be applicable to staff who are required to be retained until the specific posts are no longer needed. There would be specific limitations for which no bonus would be paid. Staff would not be eligible in cases where:

(a) They were recruited as of a specified date (possibly after the formal approval of the retention bonus or some two years before completion of the mandate);

(b) They terminate their employment prior to the cessation of need for their services;

(c) Their fixed-term appointment was terminated or not renewed on disciplinary grounds or owing to reasons specified in Staff Regulation 9.1 (a) or for such other reason as may be specified in their letter of appointment.

17. It is believed that for many staff who are offered very advantageous career opportunities, the retention bonus will probably not be sufficient for them to pass up a solid career option. It is therefore anticipated that the offer of a retention bonus could apply to as few as only half of the existing staff of the Tribunals.

18. Based on the length of tenure of existing staff within the two Tribunals, it is expected that the financial implications of a retention bonus will be offset by the costs associated with higher rates of turnover of staff. Considerable expenditures would be incurred in respect of installation and repatriation costs should existing staff continue to depart at the current rates. At the same time, substantial savings can be made if the Tribunals do not need to invest in the hiring and training of new staff, which not only is costly, but also will affect productivity and, by extension, could affect the ability of the Tribunals to meet the completion targets of their mandates within the stipulated time frame.

II. Legacy issues for the Tribunals

19. The statutes of the Tribunals provide for the continuation of a number of functions after the completion of their mandates. These residual functions include judicial, legacy and administrative issues.

20. The judicial issues include:

(a) The supervision of the enforcement of sentences, the early release of convicts, the commutation of sentences and pardons;

(b) The number of functions related to witness protection and monitoring of witness relocation agreements with third countries that will have to be carried out after the Tribunals close their doors;

(c) The establishment of a mechanism to address requests from convicted persons who are entitled to submit a request for review of judgement based on new facts not known at the time of trial and/or appeal in accordance with the Tribunal's statutes and rules of procedure and evidence;

(d) Arrangements that should be made for the monitoring of cases referred to national jurisdictions (under rule 11 bis) and/or the possible revocation of such referrals and eventual return of cases to the Tribunals' jurisdiction;

(e) A monitoring/disciplinary mechanism required to handle possible disciplinary proceedings that may arise against defence counsel after the end of the Tribunals' mandate.

21. The Tribunals' legacy of ending impunity and establishing historical facts and of supporting the rule of law must be preserved for the benefit and use of the people of the region, Governments, non-governmental organizations, educational institutions and the public at large. Access to the jurisprudence of these same institutions, as well as the other emerging tribunals (e.g. for Sierra Leone and Cambodia) is already considerable. Steps are being taken to secure the legacy of the Tribunals in the light of the completion strategy and to start planning (in consultation with the Office of Legal Affairs and the Office of Central Support Services) how to preserve most responsibly and effectively the work of the Tribunals, comply with United Nations archiving requirements and ensure that its work is accessible in the future.

22. On the administrative side, arrangements and related provisions must be made for (a) the payment of pensions to judges and surviving spouses after the closure of the Tribunals; and (b) the liabilities associated with the after-service health insurance scheme for retired staff members. Actuarial valuations are in the process of being made in respect of pensions of judges and surviving spouses, and recommendations will be presented for the consideration of the General Assembly in the context of the 2008-2009 proposed budget. Meanwhile, proposals regarding after-service health insurance are included in the report on liabilities and proposed funding for after-service health benefits to be submitted to the Assembly during its current session.

23. Finally, a decision will have to be made regarding the legal nature, composition and location of the entity which will be entrusted with the responsibility of carrying out the various legal and administrative functions described above. This could include: (a) the continuation of a residual part-time

tribunal; or (b) a similar combined mechanism supporting both Tribunals and other special courts, such as the Special Court for Sierra Leone. Alternatively, consideration could also be given to establishing a war crimes foundation for all United Nations tribunals with a wider mandate encompassing also the Nuremberg Court and other courts.

24. Efforts are currently under way by both Tribunals to address the wide range of issues mentioned above in consultation with the Office of Legal Affairs and United Nations central administrative services (Office of Planning, Budget and Accounts, Office of Human Resources Management and Office of Central Support Services) with a view to developing a final position and recommendations to the General Assembly concerning all aspects of the important issues under consideration during the next biennium.

III. Conclusions and recommendations

Staff retention

25. **The implementation of a retention bonus, in combination with other measures such as those described in paragraphs 10 through 13 above, will substantially impact on the ability of the Tribunals to meet their mandates. The introduction of a fair and transparent policy to guide the gradual reduction of staff has alleviated some initial anxieties and concerns of staff.**

26. **The experiences of other organizations that faced downsizing or closure in providing financial incentives to staff indicate that, while not a guarantee for retaining staff, a retention bonus could serve as a determining factor for some key staff.**

27. **Based on the foregoing, the General Assembly is requested to approve the establishment of a retention bonus for the staff at the Tribunals effective 1 January 2006.**

Legacy issues

28. **The General Assembly is requested to take note of the legacy issues related to the Tribunals.**